



CLARK COUNTY WASHINGTON

PUBLIC WORKS FORESTRY

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Vancouver, WA 98665
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Type III - Forest Practice Review (CCC 40.260.080) Staff Report and Recommendation

Project Name: HENDRYX PROPERTY

Case Number: FPA-2022-00037

Associated Case Number(s): PAC-2022-00043, WHR-2021-00291, GRD-2021-00044

Location: Near - 4505 NE 296TH AVE, Camas, WA 98607.

Parcels - 139573000, 139644000, 139645000, 139643000.
Located in Section 18, Township 02 North, Range 04 East of the
Williamite Meridian.

Request: Lifting of 6 Year Development Moratorium due to logging with
a State Department of Natural Resources (DNR) Forest Practice
Application (FPA) #2936835; Dated 09/05/2019.

Applicant: **Richard Hendryx Trust**
Contact: Autumn Nigro
(360) 910-3386
P.O. Box 3254
Vancouver, WA 98668
autumnnigro@gmail.com

Contact person: **AKS Engineering & Forestry**
Contact: Bryce Hanson
(360) 882-0419
9600 NE 126th Avenue, Suite 2520
Vancouver, WA 98682
bryceh@aks-eng.com



Type III Review Staff Report and Recommendation

Forest Practice Review

Property owner:

Jeffery & Maureen Patronaggio
2506 33RD CT
Washougal, WA 98671

Chelese Sara & George Edwin Bergstrom
18008 NE 110TH Ave
Battle Ground, WA 98604

Kortinie & Spencer Ballman
3120 SW 6TH Ave
Camas, WA 98607

RECOMMENDATION**APPROVE SUBJECT TO CONDITIONS OF APPROVAL**

Lands Review manager's initials: kt Date issued: 05/26/22

Forester initials: HD

Public Hearing date: June 9, 2022

County Review Staff:

Department / Program	Name	Phone	Email Address
Public Works			
Lands Manager	Kevin Tyler	564.397.4258	Kevin.tyler@clark.wa.gov
Forester	Hunter Decker	564.397.4852	Hunter.decker@clark.wa.gov
Community Development			
Biologist	Keith Radcliff	564.397.4180	keith.radcliff@clark.wa.gov

Approval Standards/Applicable Laws:

Clark County Code Section: 40.510.030 (Procedures); 40.440 (Habitat Conservation); 40.450 (Wetland Protection); Chapter 40.260.080 (Forest Practices); Revised Code of Washington 76.09 (Forest Practices); Washington Administrative Code 222 (Forest Practices Board).

Neighborhood Association and Contact

Neighborhood Associations Council of Clark County (NACCC)

Phone - (360) 5574-3363

E-mail - abramson@lifescipartners.net

Time Limits

Type III Review Staff Report and Recommendation**Forest Practice Review**

The application was determined to be fully complete on 03/23/2022. Therefore, the code requirement for issuing a decision within 92 days lapses on 7/1/2022. The state requirement for issuing a decision within 120 calendar days, lapses on 7/29/2022.

Public Notice

Notice of application and public hearing were mailed to the applicant, Neighborhood Associations, and property owners within 500(rural) feet of the site on April 28, 2022. One sign was posted on the subject property May 9, 2022.

(Note: This site is not located within the boundaries of a recognized neighborhood association.)

Public Comments

One comment from the public was received which inquired about the intent of the project. Staff explained over the phone about the project and process, also informing about submitting a written comment for the record if interested.

No comments were received from any government agencies or tribes.

Project Overview

The request is to lift the 6-year Forest Practices development moratorium for an estimated 25.5 acres of land that was previously harvested under a State Department of Natural Resources (DNR) Forest Practice Application (FPA), to apply for Land Use permits.

All subsequent development on the site will be subject to any/all required County approvals and comply with all applicable code provisions, laws, and standards.

Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan	Zoning	Current Land Use
Sites	Rural Estate	R-5	Vacant Lots
North	Rural Estate	R-5	SFR unit not sharing structure with other uses
Northeast Southeast	Forest Tier 2 Rural Estate	FR-2 R-5	Commercial Forestland SFR unit not sharing structure with other uses
South	Rural Estate	R-5	SFR unit not sharing structure with other uses
West	Rural Estate	R-5	SFR unit not sharing structure with other uses

Staff Analysis

Staff reviewed the proposal for compliance with applicable code criteria and standards in order to determine whether all potential impacts could be mitigated by the requirements of the code.

Staff's analysis also reflects review of agency and public comments received during the comment period, and knowledge gained through a site visit.

Major Issues

Only the major issues, errors in the proposal, and/or justification for any conditions of approval are discussed below. Staff finds that all other aspects of this proposal not discussed below comply with the applicable code requirements.

HABITAT REVIEW**Finding 1. Habitat Determination:**

Staff visited the site August 24, 2021 and determined that the site contains riparian priority habitat as shown in the Habitat Determination Map.

The Department of Natural Resources (DNR) forest practice permit FPA/N# 2936835 identified a Type Np (non-fish bearing) stream and a Type F (fish bearing) on the subject parcels. County wetland and habitat staff concur with the DNR findings.

Per the habitat protection ordinance, streams are considered priority riparian habitat and are afforded a riparian habitat conservation zone (HCZ) to protect ecological habitat and water quality values for the stream resource. The riparian HCZ extends outward from the ordinary high-water mark to the edge of the 100-year floodplain or one hundred (100) feet for Type Np streams and two hundred (200) feet for Type F streams, whichever is greater.

In this instance the one hundred (100) foot and two hundred (200) foot distances are greater. The habitat conservation ordinance follows a hierarchy of impacts with the first being avoidance of all impacts within a priority habitat area, if possible.

Any proposed clearing or development within a priority habitat area will require a habitat permit with applicable mitigation. Storm water designs and outflows need to avoid adverse impacts to priority habitat.

The DNR forest practice permit FPA/N# 2936835 conditioned a "no harvest riparian management zone". "When harvesting trees adjacent to Type S or Type F water, a 'no harvest riparian management zone' must be left. The width begins at the bank full width or outer edge of a channel migration zone and extends to the width determined by the site class. In this instance, according to the DNR permit the site class is II requiring a fixed width of one hundred eighteen (118) feet.

Timber harvesting has occurred on the subject parcels. Continuing forest land obligations (RCW 76.09.060, RCW 76.09.070. RCW 76.09.390. and WAC 222-20-055) are also conditioned in the DNR permit including reforestation. While on-site on August 24, 2021, Clark County wetland and habitat staff did not observe reforestation. The site was later planted as noted in the DNR Forest Practices Informal Conference Note 121225.

Type III Review Staff Report and Recommendation**Forest Practice Review**

Clark County LMS indicates, "In the document tab you will find (a) Notice(s) of Conversion to a Non-forestry Use that the Department of Natural Resources has identified. For a period of six years or until required activities have taken place, RCW 76.09.460 requires local government to deny all applications for permits and or approvals, including building permits and subdivision approvals, relating to non-forestry uses of the land subject to this notification."

A moratorium waiver is required for non-forestry conversions. In the event a conversion to non-forest practices occurs on the subject parcels, County wetland and habitat staff has determined a habitat permit and mitigation plan are required for harvesting impacts within the riparian habitat zone. Any harvesting outside of the riparian zone will be regulated under DNR permit and moratorium waiver.

Conclusion (Habitat and Wetland Review)

Staff finds that the proposed preliminary plan, meets the habitat and wetland requirements of the Clark County Code.

FOREST PRACTICE REVIEW**Finding 1. Development Moratorium following logging operation.**

CCC 40.260.080 (C)(2)(b) provides that actions that result in a 6-year development moratorium being imposed include, "the approval or notification by the Department of Natural Resources (DNR) of a Class II, III, or IV special forest practices permit that does not have an associated Conversion Option Harvest Plan (COHP) approval." Clark County received notice of a DNR Class III forest practice permit (FPA/N No. 2936835; Dated 09/05/2019) and applied the moratorium to the harvest area indicated in the forest practice permit (see Exhibit #1). That moratorium remains in place to prevent any non-forest practices development.

Finding 2. Grounds for lifting the 6-year moratorium – review criteria.

CCC 40.260.080 (C)(3) provides that any development moratorium established pursuant to CCC 40.260.080(C)(2) may be lifted by the hearing examiner through the following procedure:

1. *Public Hearing Required.*
2. *Review Criteria.*
3. *Approval.*
4. *Required Written Finding and Determinations.*

The first requirement is satisfied with the public hearing associated with this Type III process. In this process, the hearing examiner considers the following review criteria when deciding a request to lift a development moratorium established under CCC 40.260.080(C)(2):

1. *The forest practices conducted on the site meet the standards set forth in CCC 40.260.080(A)(5).*
2. *Corrective actions are implemented which would bring the forest practices into compliance with this section.*
3. *If critical areas or critical area buffers have been damaged, the hearing examiner may impose increased critical area buffer standards together with additional requirements to mitigate the damage, the cost of which shall equal at least twice the value of the timber harvested within a critical area and buffer.*

CCC 40.260.080(C)(3) further provides that the hearing examiner shall review all such requests to lift the development moratorium, along with any comments received, and applicable county regulations or policies, and may inspect the property prior to rendering a decision.

Finding 3. Analysis of the review criteria.

1. The applicant successfully scheduled a public hearing for this request, which will be held June 9, 2022. This satisfies the public hearing requirement.
2. Lifting the 6-year moratorium before expiration of the 6 years requires an assessment of whether the requirements of the underlying Forest Practices Act permit were fulfilled. DNR staff made this initial assessment at the February 2, 2022 conference, which resulted in Informal Conference Note 121225 (see Exhibit #1), in which the DNR Forest Practice Forester concluded that:
 - a. *Reforestation is satisfactory based on field review.*
 - b. *All harvest activity is complete and other FPA requirements are satisfied.*

On-site inspection by county staff found that the forest practices conducted on the site meet the standards as set forth in CCC section 40.260.080 (A)(5), as reforestation has been completed.

In the event a conversion to non-forest practices occurs on the subject parcels, County wetland and habitat staff has determined a habitat permit and mitigation plan are required for harvesting impacts within the riparian habitat zone (see Exhibit #1). Any harvesting outside of the riparian zone will be regulated under DNR permit and moratorium waiver.

3. Lastly the third review criterion can apply, critical areas and/or buffers harvested under FPA No. 2935029 are considered damaged under CCC. Under CCC 40.260.080(A)(5)(b)(1) a Class IV-G Forest Practice would have imposed non-harvestable buffers and would have not allowed for that activity to take place. The Class IV general, as defined by CCC 40.260.080(A)(2)(d)(1), are those forest practices occurring on lands which are being converted to a use other than commercial timber production. Reforestation is not required under a Class IV general forest practices permit as the property subject to the permit is being converted to a non-forestry use.

The hearing examiner may impose increased critical area buffer standards together with additional requirements to mitigate the damage, the cost of which shall equal at least twice the value of the timber harvested within a critical area and buffer. County review staff concurs with the county wetland and habitat staff that reforestation is required and recommend that increased standards are not necessary (see Condition A-1).

Finding 4. Forest Practices Conclusion.

Nothing in this Request for Lifting of Development Moratorium shall be used to limit mitigation required for the future conversion of forest land to another use. Additional wetland and habitat permits, and mitigation, may be required if future wetland or habitat impacts are proposed (see Condition A-1).

The approval process of this waiver is subject to the hearing examiner reviewing this request for removal of a development moratorium, any comments received, and applicable county regulations or policies, and may inspect the property prior to rendering a decision.

The hearing examiner may approve the application for a request to remove a development moratorium, approve the application with conditions, require modification of the proposal to comply with specified requirements or local conditions, or deny the application if it fails to comply with requirements of this article.

Lastly, required written Findings and Determinations of the removal of this development moratorium shall be approved by the hearing examiner as long as the application meets the review and approval criteria.

Based on this information, the applicant has met all the requirements set forth in CCC section 40.260.080 (Forest Practices).

Conclusion (Forest Practice)

Staff finds that the proposed preliminary plan, subject to conditions identified above, meets forest practice requirements of the Clark County Code.

Staff Contact Person: Hunter Decker, Forester, 564.397.4852

Responsible Official: Eva Haney, Public Works Director

Recommendation

Based upon the proposed plan known as Exhibit 1, and the findings and conclusions stated above, staff recommends the Hearing Examiner **APPROVES** this request, subject to the understanding that the application is required to adhere to all applicable codes and laws, and is subject to the following conditions of approval.

Conditions of Approval

Note: The Conditions of Approval below include those identified above. The letters or numbers may have changed from those in the attachments.

A	Subsequent Development Review & Approval Authority – Community Development:
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All subsequent development on this property shall first apply for and obtain any/all required County approvals and comply with all applicable code provisions, laws and standards, including the following:

A-1 CODE COMPLIANCE:

- CCC Title 15 (Fire Prevention),
- Chapter 40.210 (Resource and Rural Districts District),
- Chapter 40.260.080 (Forest Practices),
- Chapter 40.460 (Shoreline Master Program),
- Chapter 40.350 (Transportation and Circulation),

- Chapter 40.386 (Stormwater and Erosion Control),
- Chapter 40.430 (Geologic Hazard Areas),
- Chapter 40.440 (Habitat Conservation),
- Chapter 40.450 (Wetland Protection),
- Chapter 40.510 (Procedures),
- Chapter 40.540 (Boundary Line Adjustments and Land Divisions),
- Chapter 40.570 (State Environmental Policy Act (SEPA)),
- Chapter 40.610 (Development Impact Fees – General Provisions),
- Title 24 (Public Health),
- Clark County Comprehensive Plan, and
- RCW 58.17 (Plats – Subdivisions - Dedications).

Note: Any additional information submitted by the applicant within fourteen (14) calendar days prior to or after issuance of this report, may not be considered due to time constraints. In order for such additional information to be considered, the applicant may be required to request a “hearing extension” or “open record” and shall pay the associated fee.

Hearing Examiner Decision and Appeal Process

This report to the Hearing Examiner is a recommendation from the Public Works - Forestry Review program of Clark County, Washington.

The examiner may adopt, modify or reject this recommendation. The examiner will render a decision within 14 calendar days of closing the public hearing. Clark County will mail a copy of the decision to the applicant and neighborhood association within 7 days of receipt from the Hearing Examiner. All parties of record will receive a notice of the final decision within 7 days of receipt from the Hearing Examiner.

Motion for Reconsideration

Any party of record to the proceeding before the Hearing Examiner may file with the responsible official a motion for reconsideration of an examiner's decision within fourteen (14) calendar days of written notice of the decision. A party of record includes the applicant and those individuals who signed the sign-in sheet or presented oral testimony at the public hearing, and/or submitted written testimony prior to or at the Public Hearing on this matter.

The motion must be accompanied by the applicable fee and identify the specific authority within the Clark County Code or other applicable laws, and/or specific evidence, in support of reconsideration. A motion may be granted for any one of the following causes that materially affects their rights of the moving party:

- Procedural irregularity or error, clarification, or scrivener's error, for which no fee will be charged;
- Newly discovered evidence, which the moving party could not with reasonable diligence have timely discovered and produced for consideration by the examiners;
- The decision is not supported by substantial evidence in the record; or,
- The decision is contrary to law.

Any party of record may file a written response to the motion if filed within fourteen (14) calendar days of filing a motion for reconsideration.

The examiner will issue a decision on the motion for reconsideration within twenty-eight (28) calendar days of filing of a motion for reconsideration.

Appeal Rights

Any party of record to the proceeding before the hearings examiner may appeal any aspect of the Hearing Examiner's decision, except the SEPA determination (i.e., procedural issues), to the Superior Court.

See the *Appeals* handout for more information and fees.